

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:)	
)	
Digital Audio Broadcasting Systems)	MM Docket No. 99-325
and Their Impact on the Terrestrial)	
Radio Broadcast Services)	

To: The Commission

REPLY COMMENTS OF KQED, INC.

KQED, Inc., licensee of noncommercial educational FM Station KQED, San Francisco, California, hereby submits these Reply Comments in opposition to the Joint Comments of the Livingston Radio Company and Taxi Productions, Inc. ("Livingston/Taxi Comments") urging the Commission to limit the digital broadcast facilities of grandfathered "superpower" FM stations to the maximum facilities otherwise permitted under the rules. As Mid Atlantic Network argued persuasively in its Reply Comments¹ opposing the Livingston/Taxi Comments, that proposal will ill serve the public interest, depriving listeners of existing radio services. In addition, the request raises a host of issues that go well beyond the issues in this proceeding and is procedurally defective. It should be denied.

Station KQED is one of the grandfathered superpower stations whose digital service Livingston Radio Company and Taxi Productions, Inc. would like to constrain. It operates on 88.5 MHz with an ERP of 110 kw from an HAAT of 1,270 feet, and serves not only the greater San Francisco area but areas as far south as San Jose, as far north as Sebastopol and Santa Rosa

¹ See Reply Comments of Mid Atlantic Network, Inc., filed on July 16, 2004.

and as far east as Concord and Brentwood. Station KQED offers this audience a unique blend of programming that informs, educates and entertains listeners with a wide variety of news, public affairs and cultural affairs programming, composed of the best from National Public Radio, Public Radio International and the BBC. Station KQED is the most-listened-to public radio station in the country, reaching more than 745,000 listeners each week.

KQED, Inc. has applied for and obtained a special temporary authorization to operate Station KQED digitally and plans to commence digital operation shortly. Limiting Station KQED's digital facilities to those of a Class B FM station, assuming that it could technically operate both analog and digital facilities with different power levels, would dramatically limit the coverage area of the station and deny its current audience the service they currently enjoy. None of the arguments advanced in the Livingston/Taxi Comments justify that result.

While it may be true, as Livingston/Taxi argues, that the Commission has not authorized new superpower FM stations except in rare circumstances, it is also true that the Commission has rarely deprived audiences of existing services. And, in all events, allowing grandfathered superpower stations to operate digitally with the same facilities as they use for their analog stations is not authorizing any new superpower station, it is only preserving the service offered by those stations. Further, the decision whether the public interest will be served by depriving these listeners of the services they have enjoyed for 50 years poses a host of complex public interest issues which go well beyond the technical and operational issues raised by the

Commission in its *Further Notice of Proposed Rulemaking and Notice of Inquiry* in this proceeding.²

Moreover, as Mid Atlantic Network, Inc. notes in its Reply Comments, the Livingston/Taxi proposal does not satisfy the notice requirements of the Administrative Procedure Act.³ Nothing in the *Further Notice of Proposed Rulemaking and Notice of Inquiry* touches on the subject of whether the Commission should preserve the grandfathered status of superpower FM stations. As such, Commission consideration of that issue in this proceeding would deprive those not following it carefully the opportunity to comment on the suggestion, as the Administrative Procedure Act requires, and will deprive the Commission of the factual and policy record on which to make a reasoned decision. As such, consideration of the Livingston/Taxi proposal would violate the Administrative Procedure Act.⁴

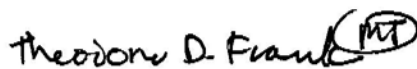
² *In re Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service*, Further Notice of Proposed Rulemaking and Notice of Inquiry, MM Docket No. 99-325, FCC 04-99 (rel. Apr. 20, 2004) (“*Further Notice of Proposed Rulemaking and Notice of Inquiry*”).

³ Reply Comments of Mid Atlantic Network, Inc. at 2.

⁴ 5 U.S.C. § 553; see *Small Finer Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 547 (D.C. Cir. 1983).

Accordingly, for the reasons set forth above, KQED urges the Commission to deny the proposal in the Livingston/Taxi Comments and to permit grandfathered superpower FM stations to operate digitally with the same facilities as they use for their analog operations.

Respectfully submitted,

The handwritten signature of Theodore D. Frank is written in black ink. It includes a circled "MT" at the end of the signature.

Theodore D. Frank
Arnold & Porter, LLP
555 Twelfth Street, N.W.
Washington, D.C. 20004
202 942-5000
Counsel for KQED, Inc.

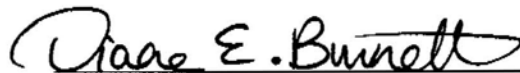
August 2, 2004

CERTIFICATE OF SERVICE

I, Diane E. Burnett, hereby certify that I have on this 2nd day of August, 2004, caused to be sent by first class U.S. mail, postage prepaid, the foregoing Reply Comments of KQED, Inc. to the following:

Peter Tannenwald, Esq.
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue, N.W.
Suite 200
Washington, D.C. 20036-3101
Counsel for Livingston Radio Company and Taxi Productions Inc.

David M. Silverman, Esq.
Cole, Raywid & Braverman, LL.P.
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, D.C. 20006
Counsel for Mid Atlantic Network, Inc.


Diane E. Burnett